

Chapter 5 Informed Choice, Due Process and Personal Safety

MVR Policy 5.1 Informed Consumer Choice

**MVR Policy 5.2 Counselor Determinations (Due Process
and Fair Hearings)**

MVR Policy 5.3 Personal Safety

MVR Policy 5.1 Informed Consumer Choice

Applied Effective Date: 12/27/02

Last Edition Date: 6/ 1/1999

Federal Authority: 34 CFR 361.52; **Opportunity to Make Informed Choice**

State Authority: **ARM 37.30.102:** Vocational Rehabilitation Policy:
Incorporation by Reference of Federal and State Authority

Policy Statement:

It is the policy of the MVR agency:

1. To inform each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of MVR, through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;
2. To assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;
3. To develop and implement flexible procurement policies and methods that facilitate the provision of services, and that afford eligible individuals meaningful choices among the methods used to procure services;
4. To provide or assist eligible individuals in acquiring information that enables those individuals to exercise informed choice in the selection of:
 - a. The employment outcome;
 - b. The specific vocational rehabilitation services needed to achieve the employment outcome;
 - c. The entity that will provide the services;
 - d. The employment setting and the settings in which the services will be provided; and
 - e. The methods available for procuring the services

MVR Policy 5.2 Counselor Determinations (Due Process and Fair Hearings)

Applied Effective Date: 12/27/02

Last Edition Date: 6/ 1/1999

Federal Authority: 34 CFR 361.57; **Review of Counselor or Counselor Coordinator Determinations**

State Authority: ARM 37.5.125; Vocational Rehabilitation Program: Fair Hearings

Policy Statement:

1. Conciliation

When the consumer or counselor determines that they cannot agree on an issue, the counselor will inform the consumer of the availability of Client Assistance Program (CAP) services and the option of requesting an immediate formal counselor decision and a fair hearing. The counselor shall assure the consumer that "conciliation" is an option and cannot be used to delay a fair hearing. The counselor may also present the option of conciliation through another MVR Counselor Supervisor or Regional Administrator.

When the consumer requests conciliation, the counselor, consumer and consumer's representative (if desired) will meet with a facilitator agreeable to both parties. If agreement cannot be reached within 10 working days of the request for conciliation, the counselor will formally notify the consumer in writing of an adverse action, advise the consumer of the availability of a formal appeal, and provide whatever assistance the consumer may need in requesting that appeal.

Formal due process begins when a consumer or the consumer's representative submits a written request for an impartial hearing. This request shall be submitted to the Office of Fair Hearings, The Department of Public Health and Human Services, PO Box 202953 Helena, Montana 59620. The appeal will be considered timely if received by the Office of Fair Hearings within 45 days of the adverse action.

2. Notice of Counselor Determination

With respect to determinations made by the MVR agency, it is the agency's policy to inform consumers of:

- a. The right to obtain review of determinations;
- b. The right to pursue mediation with respect to the determinations; and

c. The availability of assistance from the client assistance program.

With respect to timing the consumer will be provided notification of counselor determination in writing:

- a. At the time an individual applies for vocational rehabilitation services provided under this title;
- b. At the time the individualized plan for employment for the individual is developed; and
- c. At least 10 days prior to the reduction, suspension, or cessation of vocational rehabilitation services for the individual..

It is the policy of the MVR agency to provide for the applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative an opportunity to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual; and include provisions to allow an applicant or an eligible individual to be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

3. Mediation

The MVR agency will inform the individual of the availability of mediation and that mediation is voluntary on the part of the parties.

Mediation:

- a. Is not used to deny or delay the right of an individual to a hearing or to deny any other right; and
- b. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

MVR shall maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services, from which the mediators shall be selected. MVR shall bear the cost of the mediation process. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties of the dispute. An agreement reached by the parties of the dispute in the mediation process shall be set forth in a written mediation agreement. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process. Nothing in this policy shall be construed to preclude the parties to such a dispute from informally resolving the dispute prior to proceedings if the informal process used is

not used to deny or delay the right of the applicant or eligible individual to a hearing.

4. Administrative Review

From the date of request for a Fair Hearing the state has 60 days to complete the formal hearing unless the parties jointly agree to a delay. The impartial hearing officer may grant reasonable extensions of time for good cause shown at the request of the consumer (or the consumer's representative) or at the request of both parties.

The Office of Fair Hearings will order MVR to conduct an administrative review which shall be conducted except when the consumer chooses to go directly to fair hearing. The consumer may request that a CAP representative participate in the administrative review. MVR may also request participation by CAP, provided that the consumer consents to same.

5. Protection of IPE Benefit

MVR shall not institute a suspension, reduction or termination of services being provided under an Individualized Plan for Employment (IPE) pending a final determination of the formal hearing or administrative review unless the individual or, in an appropriate case, the individual's representative so requests, or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

If the matter is resolved through the administrative review, the Office of Fair Hearings shall confirm with the consumer or the consumer's representative that, since the matter has been resolved and further review is not warranted, the consumer's request for an impartial hearing will be canceled.

6. Fair Hearing

If the matter is not resolved at the administrative review, or the consumer waives the review, an impartial hearing officer shall be selected on a random basis to hear the case. The hearing officer may also be selected upon agreement between MVR and the individual or authorized representative of such individual. The impartial hearing officer shall be selected from among a pool of qualified persons identified jointly by MVR and the members of the MVR Advisory Council. This shall be done when it is determined that the consumer does not wish an administrative review, or upon the completion of the administrative review, if the matter is not resolved. The impartial hearing officer, upon receipt of the notice of

appeal, shall set the date, time, and place for the impartial hearing and give notice of same in writing to all parties.

The individual or, if appropriate, the individual's representative shall be afforded an opportunity to:

- a. Present additional evidence, information, and witnesses to the impartial hearing officer.
- b. Be represented by counsel or other appropriate advocate; and
- c. Examine all witnesses and other relevant sources of information and evidence.

The impartial hearing officer shall make a decision based on the provisions of the approved State Plan, the Rehabilitation Act, and federal and state vocational rehabilitation regulations and policies. The hearing officer shall also provide to the individual or, if appropriate, the individual's representative, and the administrator of MVR, a full written report of the findings and grounds for such decision within 30 days of the completion of the hearing.

7. Judicial Review

A party who is aggrieved by the final decision of the hearings officer may seek judicial review of that decision by filing a petition in district court within 30 days after service of the final decision.

MVR Policy 5.3 Personal Safety

Applied Effective Date: 12/27/02

Last Edition Date: Initial Policy

Federal Authority:

State Authority: ARM 37.30.102

Vocational Rehabilitation Policy: Incorporation by Reference of Federal and State Authority

Policy Statement:

When a threat on the safety of staff is made or implied by an individual in the course of the service relationship, MVR staff are released of normal service responsibilities until an assurance of safety has been restored. The assurance of safety is established through the following procedure:

1. The person making the threat participates in appropriate counseling or therapy with a third party accepted by both the individual and the agency; and
2. The individual making the threat expresses directly to the threatened parties why the threat was not an acceptable response; and
3. The individual making the threat and the department successfully negotiate the conditions of the resumed service relationship